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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

| | | |
|---------------------------|---|------------------------------|
| UNITED STATES OF AMERICA, |) | No. CR 08-0553 MMC |
| |) | |
| Plaintiff, |) | UNITED STATES' RE-SENTENCING |
| |) | MEMORANDUM |
| v. |) | |
| |) | Date: January 5, 2011 |
| JOSHUA PRATCHARD, |) | Time: 2:30 p.m. |
| |) | |
| Defendant. |) | |

INTRODUCTION

In October 2007, Mr. Pratchard went to an "Octoberfest" drinking festival in the Golden Gate National Recreation Area. Like many people there, Pratchard had too much to drink. But unlike anyone else at the festival, Mr. Pratchard stomped on a man's skull, inflicting permanent brain damage on his victim.

In October 2009, he received lenience from the Court and was sentenced to a term of community confinement and probation. Pratchard did not take the Court's gift as a second chance. Within two months of sentencing he was arrested for getting drunk and grappling with a bouncer at a bar in Walnut Creek. Five months later, Mr. Pratchard was kicked out of a halfway house because he was involved in an altercation with another resident. Now that Pratchard has

1 squandered the good will of the Court, should he finally be punished, or should he simply be let
2 off the hook?

3 More than three years have passed since Mr. Pratchard committed a serious crime and he
4 has yet to be punished. The government's position in October 2009, was that Pratchard should
5 be sentenced to 33 months in prison. Nothing has changed the seriousness of Pratchard's crime.
6 Therefore, Pratchard should be sentenced to 33 months in prison.

7 DISCUSSION

8 When a defendant is sentenced to probation and violates, he may be sentenced to a new
9 term of probation, or he may be re-sentenced. 18 U.S.C. § 3565. If probation worked in Mr.
10 Pratchard's case, we would not be where we are. Certainly the Court cannot sentence Mr.
11 Pratchard to a new term of probation in light of his performance. This leaves us with the difficult
12 question of what a reasonable sentence is in Mr. Pratchard's case.

13 The Court has to calculate the guideline range, and then consider factors laid out in 18
14 U.S.C. § 3553(a). The guideline range in this case was accurately calculated some time ago.
15 Exhibit 1, *United States Sentencing Memorandum* at 3. The applicable range is 27-33 months.

16 This leaves us with 3553(a), which asks us to view the seriousness of Mr. Pratchard's
17 crime in light of any aggravating or mitigating factors we might see in Mr. Pratchard's life. That
18 is why this is a difficult case. Unlike many defendants, Mr. Pratchard has shown potential to be a
19 contributing member of the community. He volunteered to serve his country when he joined the
20 Marine Corps, he earns an honest living, and he supports his son.

21 But for every promising thing he does, Mr. Pratchard commits some misconduct that
22 raises concern. Mr. Pratchard's career in the Marine Corps ended in disgrace. He was sent to
23 General Court-Martial and received 30 months in the brig and a Bad Conduct Discharge.
24 Though the defendant is now supporting his son, it was not until his son's mother had the
25 defendant's wages garnished that he paid what he owed. And so the only good thing we can say
26 about Mr. Pratchard with any certainty is that he is a hard worker.

27 It is a sad fact that many children are the collateral victims of their parents' crimes. And
28 Mr. Pratchard's son will not receive support if the defendant is in prison. But that is

1 consequence of Mr. Pratchard's actions, not the government's, not the Court's. Had he not
2 fractured a man's skull, and had he not violated probation, Mr. Pratchard would not be facing a
3 second sentencing.

4 The first time Mr. Pratchard was sentenced, he received an unusual break. His actions do
5 not warrant a second break. This is a man who stomped on someone's skull inflicting permanent
6 injury. He must finally be punished for his crime.

7 CONCLUSION

8 Based on the seriousness of the defendant's crime, and his failure to recognize the Court's
9 gift of a probationary sentence, he has proven that he continues to pose a threat to the community
10 and must be sent to prison.

11 A sentence of 33 months in prison is the appropriate sentence in this case.

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13 Date: January 3, 2010

Respectfully Submitted,

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15 MELINDA HAAG
United States Attorney

16 /s/

17 BENJAMIN P. TOLKOFF
18 Assistant United States Attorney
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